

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Petition of Ameritech for)	CC Docket No. 98-65
Forbearance From Enforcement)	
of Section 275(a) of Communications)	
Act of 1934, as Amended)	

AT&T CORP.'S OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to the Commission's Public Notice (Report No. 2367) released October 18, 1999 and the Federal Register notice (64 FR 57455) released October 25, 1999, AT&T Corp. ("AT&T") hereby opposes Ameritech Corp.'s ("Ameritech") petition for reconsideration of the Commission's Memorandum Opinion and Order.¹

This is just the latest of Ameritech's attempts to side step and delay any sanctions for its brazen acquisitions in violation of § 275. First, Ameritech tried to avoid the D.C. Circuit's *vacatur* of the Commission's Alarm Monitoring Order.² Then, the Commission determined that Ameritech had violated §275(a)(2).³ Now, through this petition for reconsideration, Ameritech

¹ In the Matter of Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, As Amended, CC Docket No. 98-65, FCC 99-215, released August 31, 1999 ("Order").

² See AT&T's comments 1-2.

³ See, Memorandum Opinion and Order on Remand and Order to Show Cause, In the Matter of Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation Motion for Orders to Show Cause and to Cease and Desist, CCBPol 96-17, FCC 98-226, released September 25, 1998, ¶¶ 1 & 29.

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seeks once again to forestall and prevent full adjudication of several currently pending orders to show cause why it should not be required to divest itself of unaffiliated providers of alarm monitoring services.⁴

In section 275 of the Act, Congress determined that restrictions on RBOC acquisitions in the alarm monitoring services industry were needed, while in §275(a)(2), it specifically grandfathered existing RBOC alarm monitoring operations.⁵ In considering Ameritech's petition for forbearance, the Commission applied the congressionally required test set forth in §10 of the Act, and found that Ameritech had not made the requisite showing that a grant of forbearance was in the public interest.⁶ Because Ameritech failed at least one of the three necessary criteria of a §10 forbearance analysis, the Commission correctly denied Ameritech's petition for forbearance.⁷

⁴ See, Memorandum Opinion and Order, In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, FCC 99-279, released October 8, 1999, ("Merger Order"), at ¶ 542 n. 1023, for a complete list of pending Show Cause orders.

⁵ "[T]he Commission found that, because Ameritech is the only BOC that was authorized to provide alarm monitoring services as of November 30, 1995, it is the only BOC that qualifies for 'grandfathered' treatment under section 275(a)(2)" (citations omitted) Merger Order at ¶ 542.

⁶ Order at ¶ 9.

⁷ As a threshold matter, this analysis does not address the serious question of Ameritech's attempt to use §10 to obtain retroactive authorization for conduct that was illegal when committed. Nothing in §10 authorizes the Commission to grant retroactive forbearance, or to waive a carriers' liability for fines or damages for past unlawful conduct. See, AT&T comments (2-3).

In short, the Commission held a searching inquiry, found Ameritech's petition unpersuasive and denied the request for forbearance because it was not in the public interest.⁸ Ameritech's petition for reconsideration seeks to evade the Commission's straightforward conclusion by engaging in an inappropriate and misguided debate on statutory construction and interpretation. The Commission should not permit Ameritech to continue its delaying tactics. The Commission should promptly reject Ameritech's petition so that the pending Show Cause orders may finally be resolved.⁹

⁸ Order at ¶¶ 7-9.

⁹ Ameritech attaches evidence of what it calls "changed circumstances" to its petition for reconsideration, yet this material should have been produced, if at all, in the original proceeding. Although Ameritech disingenuously claims such information was not available at the time "it filed its petition for forbearance," Ameritech does not, and apparently cannot, demonstrate that such information could not have been submitted to the Commission prior to the Commission's August 11, 1999 adoption of the Order. Indeed, one of the attached articles is dated "Spring 1999," while the other article – which discusses events in the first quarter of 1999 – is dated "Summer 1999." Ameritech has failed to demonstrate compliance with Commission Rule 1.106(b)(2) and its petition should be rejected on this ground as well.

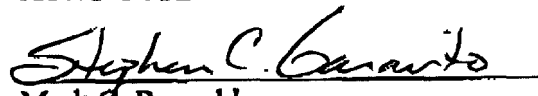
CONCLUSION

For the reasons stated above, the Commission should deny Ameritech's petition for reconsideration of the Commission's August 31, 1999 Order.

Respectfully submitted,

AT&T CORP.

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November 9, 1999

CERTIFICATE OF SERVICE

I, Denise M. Dagostino, do hereby certify that on this 9th day of November, 1999 a copy of the foregoing "AT&T Corp.'s Opposition to Petition for Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



Denise M. Dagostino

November 9, 1999

AT&T Corp.

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